IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

MRS. REGINALD REICHMAN,
Petitioner,

AGAINST

COMPAGNIE GENERALE
TRANSATLANTIQUE,
Respondent.

No. .....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

POINT I.

The case involves a right, privilege or immunity claimed by the respondent under the statute of the United States.

The limitation of liability claimed by the respondent is valid only if an alternate rate on a declaration of higher value is provided in the passage ticket. Under the terms of the passage ticket as quoted at length in the petition submitted herewith, the higher valuation is conditioned upon the passenger submitting her jewelry and cash intended to be used on the voyage to shipment as commercial cargo under a bill of lading.

Such condition is impossible of fulfillment because when goods are so shipped the passenger could not retain their control or use. Further if so shipped all the limitations contained in the United States Code, Title 46, Chapter VIII (formerly the Harter Act), would apply. Some of such provisions relieve the ship of all liability even for negligence and hence offer no protection to the passenger.

The sole question involved is whether the carrier can force the passenger to accept the limitations of that Act by incorporating the provisions in passage tickets as a condition of a higher valuation of her property, and the carrier-respondent herein is therefore claiming a right, privilege or immunity under the said Act.

In *The Kensington* case this Court has held such is not a valid alternate rate.

POINT II.

The Matter Involved Is of Great Public Interest.

The right of passengers on foreign ships to have their property carried safely or to receive reimbursement from the Carrier, is a matter of outstanding importance to the great body of American travelers. An important public interest is involved affecting the property rights of a very large number of persons.

POINT III.

The decision sought to be reviewed is directly in conflict with the decision of this Court in The Kensington, 183 U. S. 263.

The Court of Appeals of the State of New York, in the case at bar held that where a passage ticket limits liability of the carrier to foreign ports to the sum of $250

for personal property of a passenger the limitation is valid, although a higher valuation for paying a higher rate is permitted only on condition of subjecting the jewelry and cash of the passenger to the terms of the United States Code, Title 46, Chapter VIII (formerly the Harter Act) by shipping under a cargo bill of lading.

Three of the Judges of the Court of Appeals dissented from that holding.

This Court has held in *The Kensington, supra,* which is on all fours with the case in question that such limitation is invalid. There the passenger's personal baggage was damaged and it was held that the provisions in the ticket limiting liability for damage to 250 francs, without giving an alternate rate, except on condition of subjecting the property to the limitations of liability contained in the Harter Act, were invalid, stating at page 273:

> "* * * The passenger then was subjected to the inevitable alternative of having no recourse whatever for his baggage beyond the value of 250 francs, unless he agreed that he would subject it to the Harter Act. But if that Law was made applicable its provisions controlled, and therefore the carrier became entitled to all the benefits of the third section of the act, exempting from all loss or damage resulting from faults or errors in navigation or in the management of the vessel, and for other causes which are specified in the section in question. To make this exaction was consequently but in effect to demand that the passenger agree, as a prerequisite to any increased valuation of his baggage, to subject it to a risk of loss brought about by the negligence of the carrier, when otherwise the baggage would not have been submitted to risk arising from such neglect—an obvious requirement exempting the carrier from the consequences of his

own negligence. On the other hand, if the assumption be indulged in that the baggage of the passenger was within the purview of the Harter Act, a stipulation embodied in another provision of the ticket, relieving the carrier under any and every circumstance from every conceivable neglect of his servants, 'either in matters aforesaid or otherwise howsoever', was a plain violation of the prohibitions contained in the second section of the Harter Act. (See 46 U. S. C., sec. 191, and sec. 1303 [2], [8].) It follows, if the Harter Act did not apply to the baggage of a passenger, a stipulation which compelled the passenger, if he wished to value his baggage, to agree to subject it to that act, was an illegal effort on the part of the carrier to relieve himself from liability for his negligence. If this result is escaped by treating the baggage of the passenger as within the scope of the Harter Act, then there are provisions found in the ticket which are void, because they contain stipulations for immunity from negligence which are in direct conflict with the prohibition of that act."

In *The Minnetonka, supra,* it was held that the provisions of the Harter Act, although incorporated in the passage ticket, were inapplicable to articles of jewelry worn and carried on board, and the carrier was not absolved from liability to the full extent of the loss of such jewelry.

Conclusion.

The case is clearly one of which the public interest requires a full review by this Court and involves the construction of a Federal Statute by a State Court where the decision is directly contrary to the United States Circuit

Court of Appeals and United States Supreme Court construction of the same statute. The situation presented comes within the purview of Rule 38, subdivision 5 (a) of the Rules of this Court.

A writ of certiorari should therefore be granted by this Court, so that an argument of the questions raised may be had, and a judgment directed by this Court in accordance with its interpretation of the Statutes involved.

Dated, New York, N. Y., September 1st, 1943.

HAROLD R. ZEAMANS,
Attorney for Petitioner.